

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Weaver Leather, LLC)	
)	Case No. 5:19cv1990-JRA
Plaintiff,)	
)	Judge John R. Adams
vs.)	
)	
Climbing Innovations, LLC)	
)	EXHIBIT C
and)	
)	
Richard Mumford)	
)	
Defendants.)	

DECLARATION OF RICHARD MUMFORD

1. My name is Richard Mumford. I am over the age of 21 and otherwise competent to give this declaration. Unless otherwise stated herein, this declaration is based upon my personal knowledge.

2. I am the sole owner of Climbing Innovations, LLC (“Climbing Innovations”), a limited liability corporation formed under the laws of Georgia.

3. Climbing Innovations designs, markets, and sells innovative products to customers who climb trees, typically using ropes and devices designed to assist in ascending or descending ropes. Some of our customers might purchase our products for reasons other than tree climbing, such as for ropes used in rescue, construction, cave exploration, or other related fields in which ascending or descending ropes is necessary.

4. I have been a rope-climbing enthusiast for most of my life. I am familiar with numerous different ascender products that have been available for purchase over the years. By “ascender product” I mean to refer to a device that is intended to assist a climber in climbing up

a rope. For at least thirty years, I believe the majority of these devices have included at least four components: (i) a foot attachment for one of the climber's feet, (ii) an ascender cam, (iii) a bungee cord, and (iv) a length of cord, rope, strap, or some other flexible component that transfers the weight of the climber from the foot attachment to the ascender cam.

5. The ascender cam is directly attached to the vertical rope that is being climbed, and is designed to engage or lock with the rope firmly without slipping when the weight of the climber forces it downward. However, if the ascender cam is moved in the upward direction, it slides freely while remaining engaged with the vertical rope.

6. The bungee or other flexible cord automatically raises the ascender cam (i.e., slides the cam up the rope) as the climber climbs. For example, the bungee cord might be connected to the ascender cam and the climber's chest. As the climber goes up, the bungee cord pulls the knee ascender up with the climber.

7. Many of these ascender products have been referred to as "knee ascenders" because when both of the climber's legs are fully extended, the foot attachment extends to the approximate position of the climber's knee.

8. Knee ascenders are most useful when used in conjunction with a separate foot ascender. A foot ascender is essentially an ascender cam that is configured to be harnessed to a climber's shoe near the ankle. A rope climber will ascend a rope with one foot using a foot ascender, and the other foot using the foot attachment on a knee ascender. As the climber shifts his weight back and forth between feet, he can "walk" up the rope. As he climbs, the bungee cord will raise the ascender cam along with the climber.

9. Climbing Innovations has designed and offered for sale various of its own, innovative knee ascender and related products, using the trademark “SAKA.” (SAKA is an acronym for “self advancing knee ascender”.)

10. Weaver Leather, LLC (“Weaver”) filed a patent infringement lawsuit against Climbing Innovations and me in about January 2018 (the “First Lawsuit”). The First Lawsuit alleged that one of Climbing Innovations’ products (namely, the “Original SAKA” knee ascender) infringed U.S. Patent No. 9,352,190 (the “190 patent”).

11. Although I believed (and continue to believe) that the Original SAKA did not infringe the 190 patent, Climbing Innovations and I entered into a written Settlement Agreement with Weaver to resolve the lawsuit because the cost to defend the lawsuit was too high.

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. Climbing Innovations and I fully complied with all our obligations under the Settlement Agreement.

14. However, Climbing Innovation and I did not ever admit or agree that the Original SAKA infringed the 190 patent. [REDACTED]

[REDACTED]

[REDACTED]

15. Although we agreed to discontinue the Original SAKA, Climbing Innovations and I never agreed that we would not continue to develop and design new and innovative knee ascender products. We also never agreed to stop using the SAKA trademark. In fact, we did

continue our efforts to design innovative new climbing products, including innovative knee ascenders. And Climbing Innovations has continued to use the SAKA trademark.

16. One of those new and innovative knee ascender products is the “SAKA-mini.” I developed the SAKA-mini after the settlement of the First Lawsuit. Climbing Innovations began offering the SAKA-mini for sale, and still offers it for sale. Although it continues to use the SAKA trademark, the SAKA-mini is materially different than the Original SAKA.

17. My understanding is that Weaver has not accused the SAKA-mini of infringing the 190 patent.

18. The SAKA-mini includes four main components: an ascender cam, a bungee cord, a loop for the climber’s foot, and a single length of black strap that transfers the weight of a climber from the foot loop to the ascender cam (and then to the vertical rope being climbed). No other component in the SAKA-mini is involved in the weight transfer from the foot loop to the cam. Indeed, it is not possible for any other part of the SAKA-mini to transfer weight from the foot loop to the cam, because no other component is connected to both the foot loop and the cam.

19. The SAKA-mini is materially different from the Original SAKA.

- a. In the Original SAKA, the weight transfer between the foot loop and the ascender cam was accomplished by a flexible guide. The guide was approximately 16” long and consisted of a black polyester strap and two tubes (used to guide a bungee cord into its proper position) all permanently sewn together and forming a single integrated guide unit. This integrated guide unit was permanently attached to the ascender cam via two connections: a non-removable T-Bolt and a button flange bolt. In the SAKA original, any climber weight applied to any part of the flexible guide would necessarily be transferred directly to the ascender cam,

because, as noted above, the guide and black strap were all permanently sewn together into a cohesive unit, which in turn was permanently attached to the ascender cam.

- b. In the SAKA-mini, the weight transfer between the foot loop and the ascender cam is accomplished by a simple black, flat, polyester strap. The strap length is adjustable to fit the size of the climber or desired stride. No other component in the SAKA-mini can transfer the weight of the climber from the foot loop to the ascender cam, because no other component in the SAKA-mini connects the foot loop to the ascender cam.

20. After approximately a year of additional development work, Climbing Innovations then began offering for sale the “SAKA-mini-max.” It also began offering a SAKA conversion kit, which allows a SAKA-mini to be converted into a SAKA-mini-max.

21. The SAKA-mini-max is substantially different than the SAKA Original for at least the same reason that the SAKA-mini is substantially different than the SAKA Original:

- a. In the SAKA-mini-max, the weight transfer between the foot loop and the ascender cam is accomplished by a simple black, flat, polyester strap. The strap length is adjustable to fit the size of the climber. No other component in the SAKA-mini-max can transfer the weight of the climber from the foot loop to the ascender cam, because no other component in the SAKA-mini connects the foot loop to the ascender cam.

22. Thus, the component that transfers weight from the foot loop to the ascender cam in the SAKA-mini-max is identical in every way to the component that transfers weight in the SAKA-mini: a simple, flat, black polyester strap. As noted above, this component is

substantially different from the complex guide tube component used in the Original SAKA to transfer weight from the foot loop to the ascender cam.

23. The SAKA-mini-max differs from the SAKA-mini in that the SAKA-mini-max includes two additional components: a second bungee cord, and a separable red or black guide device that is used to hold in proper position the second bungee cord. The red or black guide device cannot even arguably assist in transferring the weight of the climber from the foot loop to the ascender, because the red or black guide is not connected to the foot loop and is not connected to the ascender. (The guide has a loose-fitting notch near the top where it touches the ascender cam, but there is no physical connection capable of resisting any force.) The guide is separated from the black strap by a strip of Velcro. Indeed, if any non-negligible force is applied to the guide, it will completely detach from the rest of the device. And of course, even if the guide detaches from the device, there is no change in the weight transferring function of the black strap. Whether or not the guide is detached, the black strap provides the only component that is capable of transferring the weight of the climber to the ascender.

24. I understand that Weaver has filed a motion for a preliminary injunction, asking the Court to enter an injunction requiring Climbing Innovations to stop selling the SAKA-mini-max and the SAKA conversion kit.

25. Climbing Innovations is a tiny company. It has no employees, and no offices. I operate Climbing Innovations out of my home. All products are assembled in my home, packaged in my home, and shipped out of my home.

26. The SAKA-mini-max is an important product to the success of Climbing Innovations. If the Court were to order the SAKA-mini-max to be removed from the market, I believe there is a grave risk that Climbing Innovations would have to cease doing business.

27. An injunction would also be unfair to rope-climbing enthusiasts. I have received much positive feedback from climbers regarding the SAKA-mini-max. They consider it more adaptable and efficient than competing products. For example, some of the features driving its sales include that it is adjustable to a very wide range of climber sizes and climber strides; it is modular such that if any component is damaged, that component can be replaced without the need to purchase an entirely new device and without the need to return to the manufacturer for repair; and it is extremely compact, packing easily in a small space. None of these features have any relationship to the 190 patent.

I declare under penalty of perjury that the foregoing Declaration is true and correct.

Dated: September 19, 2019



RICHARD MUMFORD